REMARKS

Claims 49-74 and 79-90 are currently pending. Of those, the Examiner rejected claims 49-74 and 79-90. Applicant has amended Claims 49, 51, and 58. Accordingly, after entry of the present amendment Claims 49-74 and 79-90 will be pending.

If the Examiner believes it will be helpful, Applicant is willing to make himself available to travel to the Patent Office for purposes of interviewing with the Examiner. Applicant respectfully solicits the Examiner's indication of any preferred dates for such an interview, so that Applicant can make appropriate arrangements to be in the Patent Office for the interview.

Claim Objections

The Examiner has indicated Claim 51, lines 11-12, "for calculating a description of medical service being" appears to be grammatically incorrect and requests appropriate action. Applicant has deleted the word "being" from the end of that phrase, and respectfully submits that is sufficient to address the Examiner's objection.

Claim Rejections – 35 U.S.C. §112

The Examiner has rejected Claims 49, 51, 55-57-59, 68, 74-76, 88-89, 91-93 as being indefinite for failing to particularly point out and distinctly claim the subject matter for various reasons.

- The Examiner asserts that Claim 49, line 7, "wherein said prompts include," is unclear. Applicant has amended that Claim to clarify that the "prompts" are the "real-time prompts" identified in line 4 of that claim.
- The Examiner indicates that the recitation in Claims 51, 55, and 57 "soliciting underlying information for calculating a description of medical service, said

underlying information being independent of the description of said medical service for purposes of the eventual billing for the service" is unclear as to what types of information are considered to be "independent" of the description of said medical service. Applicant respectfully notes that, among other things, the specification describes this aspect of the invention (see, e.g., p. 9, l. 2-11; p. 10, l. 20-p.11, l. 2; p. 13, l. 17-p. 14, l. 10).

- In the Office Action it is indicated that Claim 58, lines 7 and 9, "said details" lacks proper antecedent basis. Applicant has amended Claim 58 in that regard.
- The Examiner objects to Claim 59's uses of "said information constituting more than just the final billing code for the medical services." Applicant respectfully directs the Examiner to the discussion below regarding the CPT codes and the calculation of same and the various information required to determine same, and submits that the same discussion as below is relevant and sufficient to explain the basis for the limitation in Claim 59 of "said data constituting more than just the final billing code for the medical services".

Claim Rejections 35 U.S.C. 103

In paragraphs 6-11 of the Office Action, the Examiner has issued various rejections based on various allegedly proper combinations of allegedly prior art. The Examiner has not issued any other rejections, including not locating any anticipatory references. Applicant remains unaware of any such anticipatory references, and as further explained below, Applicant likewise respectfully submits that none of the cited references (and/or references of which Applicant is aware) can be properly combined to make obvious Applicant's claimed inventions.

The Examiner's rejections are summarized here:

1. *Par. 6*: Claims 49-56, 58-61, 63-67, 68-69, 71-73, 74, 76-78, 80-82, 84-86, 88, and 90 under 35 U.S.C. §103(a) as allegedly being unpatentable over Evans (5,924,076) in view of Dorne (5,325,293).
2. *Par. 7*: Claims 57, 77, 79, 87 and 90 are rejected under 35 U.S. C. 103(a) as being unpatentable over Evans (5,924,074) in view of Dorne (5,325,293) and Peters et al (5,893,098).
3. *Par. 8*: Claim 62 is rejected under 35 U.S. C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne(5,325,293), and further in view of Official Notice.
4. *Par. 9*: Claims 70 and 81-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne (5,325,293) as applied to claims 49, 51, and 68, and further in view of Letzt et. al (5,612,869).
5. *Par. 10*: Claim 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne (5,325,293) as applied to claim 68, and further in view of Kraftson et al. (6,151,581).
6. *Par. 11*: Claims 88-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne (5,325,293) as applied to claims 49 and 51, and further in view of Peters et al. (5,893,098).

Applicant's review also indicates that the remaining pending independent claims are Claims 49, 51, 55, 57, 58, 59, 68, 74, and 76. To the extent that those claims are allowable, all claims depending from them (all the other remaining claims) are likewise allowable.

Accordingly, it appears that the only rejections of the aforementioned *independent* claims are those set forth in the Office Action pars. 6 and 7 (and the latter only with respect to Claim 57).

Thus, to the extent that Applicant overcomes the rejections of Office Action par. 6 (and of par. 7 with respect to Claim 57), all of the other rejections will likewise be overcome. Accordingly, and without waiving other bases for traversing the pending rejections, Applicant first generally addresses the Examiner's asserted combination of Evans '074 and Dorne '293. With respect to Claim 57 only, Applicant then addresses the Examiner's asserted combination of Evans '074 and Dorne '293 with Peters '098.

As presently understood, Applicant respectfully submits that the Examiner's combination of those two primary references (Evans '074 and Dorne '293) is improper and/or does not support the conclusions asserted by the Examiner. Among other things, both Evans '074 and Dorne '293 are inapposite and not properly within the field of prior art citable against the present application. In that regard, the Office Action itself acknowledges at least some of the shortcomings of Evans '074: "Evans fails to expressly disclose an electronic means including a processing means for calculating intermediate values based on said recorded information and a processing means for using said intermediate values to generate said billing code."

It is illuminating to examine some of the reasons that for Evans' admitted failure to disclose those elements (which comprise at least two elements of various of the rejected claims): (1) automating the calculation of Evaluation and Management (E&M) billing codes based on information collected from the physician during the patient encounter; and (2) using the same information that was collected during the patient encounter (and that was used to generate the E&M billing code) to generate a chart note that corresponds with the proper E&M code. At bottom, Evans is a completely different technology. Evans does not "calculate" anything, and Applicant respectfully submits that, because it does no calculations, Evans cannot be prior art with respect to the instant Application. Evans certainly does not undertake the complex tasks of

(1) collecting patient data at the point of care and (2) calculating intermediate and final billing codes based on that information collected about the patient at the point of care. In fact, Evans never uses the terms "intermediate," "final," or any similar terms to show that Evans could have evened envisioned the concepts of the instant Application.

In contrast, the instant Application makes complex computations based on the level of detail of three major components of a patient/physician encounter—(1) the patient history, (2) physical examination, and (3) medical decision making. These "intermediate" codes generate values that are combined (or otherwise processed in the "calculation" with other factors, such as the length of time of the patient encounter, which factor can override the intermediate code calculations - see Claim 61), to compute a final code. Along with calculating that final Code, the instant application provides sufficient documentation to support the final Code.

The attempted combination of Evans with Dorne does not address the aforementioned shortcomings. The Office Action cites Dorne as disclosing "an apparatus for correlating billing codes with medical procedures comprising: an electronic means including a processing means for calculating intermediate values based on said recorded information (Fig. 1, col. 3 lines 18-38, col. 20-46) and a processing means for using said intermediate values to generate said billing code (Fig. 1, col. 3 lines 18-38, col. 20-46)." Applicant respectfully submits that this is a misreading of Dorne and/or an improper application of that reference. As set forth in detail below (and in the detailed analysis distinguishing Dorne in Applicant's prior response to the February 1, 2006 non-Final Office Action), the Examiner apparently has misunderstood Dorne's "apparatus for correlating billing codes with medical procedures" (to the extent that the Examiner asserts that Dorne is applicable to Applicant's inventions).

First, as with Evans, Dorne does not calculate anything. Dorne's summary of invention shows additional reasons that Dorne is inapposite to the present application. Dorne states that: "The present invention comprises a system and a method for correlating [not calculating] medical procedures into billing codes." (Column 3, lines 1-20) In this regard, Dorne makes clear that his invention relates solely to medical procedures: "The AMA has structured the CPT (Current Procedural Terminology) coding system into five main procedure rubrics: (1) Medicine; (2) Anesthesia; (3) Surgery; (4) Radiology; and (5) Pathology." (Column 1, lines 32-33) Dorne's disclosure is limited to these five sections of the CPT. Dorne focuses throughout its disclosure on the procedures used by radiologists, emphasizing the Surgery and Radiology sections of the CPT manual. However, the American Medical Association (AMA) has structured the CPT coding system into six total sections: the five identified by Dorne and an additional section, the Evaluation & Management (E&M) codes, which is actually the first section of the CPT manual. *While Dorne deals solely with the five procedural sections, the instant application deals solely with the* ***sixth section (the one NOT cited by Dorner)****: the Evaluation & Management Codes.* The reason that this distinction is so critical is that ***only*** the E&M Codes require the complex calculations set forth in Applicant's invention.

The shortcomings of Dorne with respect to the instant inventions can be further explained by way of example. Under Dorne's technology, the physician performs a procedure on (or relating to) a patient, such as a diagnostic test or a surgical intervention. Each test or surgical intervention has an actual number in the CPT coding guideline. When billing for that procedure, the physician (such as radiologists, for example) lists each actual procedure code, using the codes listed in the CPT book that, as discussed above, are chosen by the Dorne-practicing radiologist

only from the five (5) "procedure" sections of the CPT book - *not* from the E&M Codes to which the instant invention is directed.

Although Dorne discloses that the codes can be "combined" together (in a way that complies with billing regulations), Dorne does not involve any "calculation". More specifically, Dorne discloses a method for "combining" individual procedure codes in such a way as to determine the final coding. In Dorne, the radiologist knows what procedure needs to be done, and knows the "raw code" for the procedure (from the five "procedure" sections of the CPT book). For example, if the patient has a heart problem, the radiologist knows that a radiological procedure will be performed to visualize the arteries in and around the heart. *Accordingly, the raw code for each procedure, for example each blood vessel that is visualized, is known and does not have to be constructed. The physician immediately knows what procedure he or she is performing and enters the corresponding raw code. Dorne simply helps the physician, if necessary, list these known raw codes in such a way as to comply with billing requirements.* **Thus, the physician using Dorne must enter the raw CPT procedure codes, and Dorne "combines" these codes to comply with billing requirements.**

In contrast with Dorne, ***the physician using the preferred embodiments of Applicant's invention does not have to enter any codes in order to practice the invention***. Rather, the physician simply enters data about the patient encounter (i.e., family and medical history, details of the patient's personal history, blood pressure or other details of the physical examination, medications prescribed, etc.). Based on the raw *data* entered by the physician (as opposed to the raw "CPT codes" that Dorne requires), the present application, through a series of complex calculations, determines the appropriate final Evaluation & Management code, something neither needed nor envisioned by Dorne.

Thus, in contrast to Dorne, the present inventions allow the health care worker (who does *not* know in advance what the E&M raw code is) to determine the E&M raw code (which determination can only be accomplished by means of a complicated calculation process). In fact, the health care worker using the present inventions *cannot* know in advance the E&M raw code, because E&M codes pertain to an encounter between a patient and a physician (or other health care worker) in which the health care worker does not and often cannot know ahead of time what questions will need to be asked, what kind of physical examination will need to be performed, what kinds of considerations will go into treating the patient, etc. The final raw code depends on the complexity of the evaluation, i.e., the amount of details obtained in the history, the number of body parts or functions assessed in the physical examination, and the number of elements involved in the physician's thought processes that are part of medical decision-making. The present invention discloses and claims methods of simplifying the complex process of determining that E&M code (the one NOT disclosed/discussed in Dorne) by generally prompting, guiding, and soliciting information/data for recording and processing information, and then calculating an associated raw code for billing purposes.

Accordingly, both Evans and Dorne are inapposite to the present inventions, and so is the combination of the two. Even if Applicant were to concede that "it would have been obvious ... to include the features of Dorne within the apparatus of Evans ... [to] rapidly and simply correlat[e] CPT codes with medical procedures performed during patient examination" (a point that Applicant does not concede, but which Applicant does not need to concede in the present context), as set forth above, that asserted "combination" of Evans and Dorne does not aid one of ordinary skill in the art in navigating and/or calculating the highly complex intermediate and final E&M billing codes as disclosed and claimed in Applicant's application. In addition, that asserted

"combination" of Evans and Dorne does not aid a user (or a person of ordinary skill in the art) in generating a corresponding chart note.

With respect to the remaining independent Claim 57, Applicant respectfully submits that the addition of Peters to the Evans/Dorne combination does not address the foregoing shortcomings. In addition to the remarks set forth above, Applicant notes that the Office Action asserts that Evans does "suggest using ICD9 and CPT codes." As explained above, Evans not does not expressly disclose that (nor does it impliedly disclose it either). At bottom, Evans has nothing to do with calculating E&M (or any other) billing codes. Even if it were accurate to state that Evans "suggest[s] using ICD9 and CPT codes", it would add nothing of relevance to determining the patentability of Applicant's inventions. One crux of the instant Application is the *calculation* of the E&M Codes (which, as noted above, are one small subset of the CPT Codes), and not the "suggestion" to use them. "Suggesting" using these codes means nothing, because the codes are required as a matter of law. The problem, and the solution provided by the instant inventions, is that (in contrast to selecting the procedure codes envisioned in Dorne and/or Evans) the end user *cannot* determine the appropriate E&M Code to select without going through a series of complex calculations. The instant inventions solve this problem. In certain of the many embodiments, the inventions automate the entire process and, at the same time, provide accurate and complete documentation to support the selected code, because both the E&M Code and the supporting documentation come from the same database.

In addition to the foregoing, Paragraph 6(G) of the Office Action appears to take certain terminology out of context, and by doing so, makes inapplicable comparisons. For example, all that Evans offers is a "catalog" wherein the physician simply chooses a diagnosis and procedure from a list. *Thus, in Evans, the calculations are taking place in the physicians' head, not via a*

calculating means in the invention. Of course, this works fine where the calculations are simple, involving at most the combination of a few known procedure codes. However, when dealing with E&M Codes, the calculations are simply too complicated. The physician is not able to calculate the numerous complex calculations required to obtain the appropriate E&M Code. In addition, the documentation required to support the appropriate E&M Code is also very complex and extremely time consuming in order to ensure proper compliance. Although Evans does not envision these complexities, the instant Application does.

Further, the comments above also apply to the Office Action statement that Dorne "discloses the step of calculating a billing code calculates an appropriate code from the United States Health Care Financing." As set forth in detail above, Dorne deals with stating non-E&M Codes, a much simpler task. The fact that the E&M Codes and the other CPT Codes (those on which Dorne is based) happen to be contained in the same book of guidelines does not make the two inventions the same.

The Office Action's rejection of Claim 61 likewise demonstrates the shortcomings of the cited art. The Office Action states that "It is inherent that collecting data over the Internet includes a timer in order to time out the data session when a user has not entered data over a certain period of time." However, as set forth in the present Application, and in the many subsequent amendments thereto, this misses the point. Timing out a data session over the Internet has nothing to do with Applicant's invention. Rather, the instant inventions track the time of *the physician's encounter with the patient*, because that is one of the criteria for generating an E&M billing code.

Similarly, in rejecting Claims 64 and 65, the Office Action cites Figure 7 of Evans for the proposition that "Evans discloses a history score and a physical examination score (Fig. 7) and a

final score showing scores that are outside of a range (Fig. 7)." However, Evans' Figure 7 shows laboratory values from blood tests. There are no history or examination scores, and indeed there aren't even any elements of these, in that cited Figure. The "out of range" indication in that Figure means that a numerical result of a particular blood test result is too high or too low. In addition, the "out of range" is not a "final score" as contended by the Office Action. Rather, it is only showing that an individual number is too high in one case and too low in another.

The Office Action's reliance upon Figure 20 (Paragraph 6(Q) of the Office Action) is similarly misplaced. In fact, Figure 20, and col. 11 lines 36-64 of Evans, actually supports the patentability of Applicant's inventions. There, Evans makes clear that his technology does not calculate anything. Rather, Evans simply allows the end user to select the appropriate code(s) which are then presumably saved into a database. See lines 42-51 ("The physician selects the appropriate system and the diagnosis module enters the selected system in the system box and provides a list having specific diagnosis codes for the selected body system in the diagnosis box. *The physician then selects the appropriate diagnosis code and clicks on the add button adjacent to the diagnosis selection box.*"). Thus, there is nothing to support the Office Action's contention that Evans discloses "linking said gathered information" and "processing said linked information with an algorithm to compute a final score" and "providing a copy of said final score and other gathered information." In fact, Evans does not do that.